Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

IN RE

LEONARD SHERMAN -

Petitioner

vs.

JOAN D. BERLIN, INDIVIDUALLY, and D.B.A. J.D.B. PROPERTIES; CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD; CASEY YOUNG, DIRECTORS, CALIFORNIA DIVISION OF WORKERS' COMPENSATION -

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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In Pro Se

COPY

54

IN THE

SUPREME COUPT OF THE UNITED STATES
OCTOBER TERM,1994

LEONARD SHERMAN, Petitioner
vs.

JOAN D.BERLIN,INDIVIDUALLY,and dba J.D.B. PROPERTIES;CALIFORNIA WORKER'S COMPENSATION APPEALS BOARD;CASEY YOUNG,DIRECTOR,CALIFORNIA DIVISION OF WORKER'S COMPENSATION,
Respondants

PROOF OF SERVICE

I,LEONARD SHERMAN, do swear or declare that on this date April 24, ,1995,pursuant to Supreme Court Rules 29.3 and 29.4,I have served the attached PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel,and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as

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CLERK

U.S.COURT OF APPEALS, NINTH CIRCUIT

121 Spear Street - P.O.Box 193939

San Francisco,California 94119-3939

Circuit Judges: JAMES R.BROWNING,JEROME HARRIS,

EDWARD LEAVY

Leonard Sherman

LEONARD SHERMAN,Affiant

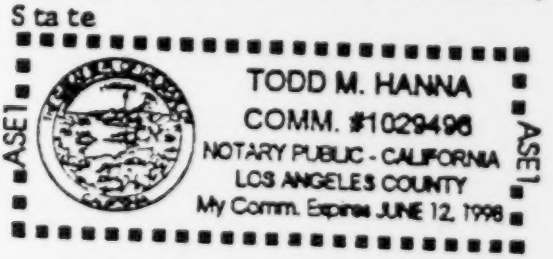
Subscribed and sworn before me this 24th. day

of April 1995

Todd M. Hanna

Notary Public in for said County and

State



QUESTIONS PRESENTED

Was the Petitioner denied adequate relief and his rights, which cannot be obtained in any other forum or from any other Court, as authorized by Title 28 U.S.C., Section 1651(a), and there are present exceptional circumstances warranting the exercise of the Court's discretionary powers in support of the failure of State Courts, the Federal District Court, and the United States Court of Appeals, Ninth Circuit, to address and to comply with the issues pleaded by the Petitioner, that a secondary Workers' Compensation Appeals Board trial Court allowed Respondent BERLIN to fraudulently breach stipulated agreements and the judgment rendered of the same causes of actions and issues, of a prior constitutional Court, having jurisdiction thereto, having merit, was conclusive and final with res judicata effect in subsequent WCAB proceedings and civil actions, which is a violation of the doctrines of res judicata and collateral estoppel, which is required by all Courts to be enforced as stated in California State and Federal laws, thereby depriving Petitioner of his rights for relief, and his demanded jury trial as allowed and stated in the 7th Amendment of the United States Constitution?

LIST OF PARTIES

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UNITED STATES COURT OF APPEALS,NINTH CIRCUIT

121 Spear Street - P.O. Box 193939

San Francisco,California 94119-3939

Circuit Judges:James R.Browning,Jerome Farris,

Edward Leavy

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PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS

Petitioner, LEONARD SHERMAN, respectfully prays that an Extraordinary Writ of Mandamus be issued to review the judgment and opinion of the United States Court of Appeals of the Ninth Circuit refusing to address or comply with the doctrines of res judicata and collateral estoppel, which are California State and Federal laws which bars the relitigation of the same causes of action and issues of final judgments rendered by a prior Court having jurisdiction thereto, with merit, and having res judicata effect in subsequent WCAB proceedings and civil actions thereby depriving petitioner of his rights for a demanded jury trial as allowed under the 7th Amendment of the United States Constitution.

OPINIONS BELOW

JURISDICTION

The U.S. Court of Appeals, Ninth Circuit, filed a Memorandum in this matter on October 4, 1994. A timely petition for hearing was also filed on June 15, 1994. The Court of Appeal's denial of the Petition for rehearing was issued on December 27, 1994, and is set forth in APPENDIX A. This Court's jurisdiction is invoked under TITLE 28, U.S.C., Section 1651(a).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT VII to the U.S. Constitution is set forth in APPENDIX F

AMENDMENT XI to the U.S. Constitution is set forth in APPENDIX F

AMENDMENT XIV to the U.S. Constitution is set forth in APPENDIX F

DOCTRINE OF RES JUDICATA is set forth in the Petition for the Extraordinary Writ of Mandamus.

DOCTRINE OF COLLATERAL ESTOPPEL is set forth in Petition for Extraordinary Writ of Mandamus

STATEMENT OF THE CASE

On December 28, 1984, petitioner was hired as an apartment manager by a husband-wife investment company to manage two apartments in the Brentwood area of the City of Los Angeles, State of California.

Petitioner performed his duties in an exemplary manner from the date of his hiring until May,1986, until respondent BERLIN assumed sole ownership and control of the apartments managed by the petitioner pursuant to a divorce settlement/ decree with her husband, and assumed the D.B.A. J.D.B. PROPERTIES, and converted a recreation room into her office in the same apartment managed by petitioner, who also occupied an apartment in the same building as a condition of his employment.

BERLIN was extremely hostile, abusive, screaming at the petitioner, tenants, suppliers, and other apartment managers in buildings which BERLIN acquired in her divorce.

Petitioner was under extreme stress, and developed feelings of anxiety, depression, loss of weight, dizziness and gastrointestinal pains.

Petitioner therefore sought a medical consultation to determine the extent of his illnesses. The examining doctor noted that petitioner was in dire need of medical treatment, and referred the petitioner to his Workers' Compensation attorney to file a claim with the Workers' Compensation Appeals Board ("WCAB").

Said attorney promptly noticed BERLIN by letter, indicating that petitioner filed a WCAB claim, and requested the name of BERLIN'S Workers' Compensation insurer, hospital or doctor to treat her injured employee.

BERLIN was outraged because petitioner filed a WCAB claim, then refused to acknowledge that petitioner was injured, then failed to advise petitioner of his rights to Workers' Compensation benefits, as stated in the California State Labor Code, Section 3550.

Therefore, the said Workers' Compensation attorney arranged for the petitioner to be treated for his gastrointestinal injuries with a medical internist, and petitioner was admitted to the outpatient clinic at the U.S.

Veteran's Hospital Department of Mental Health for treatment of his psyche, for a period of fifteen months.

BERLIN increased her outrageous conduct to the injured petitioner by perpetrating the following acts:

1) BERLIN failed to provide petitioner with Workers' Compensation benefits;

2) BERLIN failed to contribute monies from the wages of the petitioner for State Disability Insurance;

3) BERLIN illegally withheld wages of petitioner, requiring petitioner to have the State Labor Commissioner recover petitioner's lost wages;

4) BERLIN evicted the petitioner from his apartment which he occupied as a condition of his employment using false documents in Superior Court.

Petitioner sought relief from BERLIN by seeking assistance of the WCAB at their office, thirteen months after petitioner filed his WCAB claim. While petitioner was waiting in the WCAB lobby to seek assistance, a friendly Workers' Compensation attorney approached the injured petitioner, who noted the sufferings of the petitioner, and advised the petitioner of his right for an "emergency hearing" since petitioner was not receiving either Workers' Compensation benefits or State Disability Insurance.

A Workers' Compensation Judge therefore ordered petitioner to be examined by an "agreed" medical examiner, and if petitioner was found to have work related injuries, that said Judge would order BERLIN to appear before his Court, or face severe penalties.

As shown in APPENDIX E, in which all parties appeared before said Workers' Compensation Judge HALPERIN, a FINDINGS OF FACT and OPINION OF DECISION was rendered by the Court, with BERLIN agreeing to a stipulated settlement whereby it was agreed that petitioner sustained injuries arising out of and in the course of his employment, and that petitioner was terminated from his employment on November 7, 1986, which was five weeks after petitioner filed a WCAB claim.

The said Workers' Compensation hearing was heard in an administrative and constitutional Court, having jurisdiction thereto, with merit, and with res judicata effect in all subsequent WCAB proceedings and civil actions.

BERLIN had the opportunity to present witnesses at said hearing, but failed to do so.

Petitioner was subjected to appear at fifteen continuances, spreading over a period of six years, at WCAB hearings.

During the period before the final deposition of petitioner's case, the petitioner's award of compensation was rescinded after petitioner was totally disabled over five years, which was

illegal under the California State Labor Code, Section 5804.

On December 29, 1992, at a bifurcated hearing before the Workers' Compensation criminal trial of BERLIN, who was alleged to have violated the California State Labor Code, Section 132a, as shown in APPENDIX D, the trial Court issued a Findings of Fact and Opinion of Decision, which relitigated the Findings of Fact and Opinion of Decision of the prior Court, as shown in APPENDIX E, and allowed BERLIN to be free of prosecution, and payments of penalties, reinstatement of employment, and other entitlements as stated herein, under said Labor Code, Section 132a, which bars discrimination of injured employees who file a WCAB claim.

Petitioner objected to BERLIN'S fraudulent testimony, and that of her procured witnesses at the 132a trial, which was taken under oath and under penalty of perjury.

Petitioner argued orally and presented a written brief to the secondary 132a trial Court, that the doctrines of res judicata and collateral estoppel bar relitigation of the same causes of action and issues and the breaching of stipulated agreements which were made at the prior Court with res judicata effect.

The 132a secondary trial Court ignored and refused to address the doctrines which were violated.

Therefore, petitioner filed a petition for reconsideration for review by the WCAB.

Petitioner alleged in his petition as shown in APPENDIX C, that the secondary 132a trial Court lacked jurisdiction to ignore the doctrines of res judicata and collateral estoppel, in addition to petitioner's allegations that BERLIN and her procured witnesses perpetrated fraud.

The WCAB ruled on March 5, 1993, denying reconsideration for the "foregoing reasons" without addressing the violations of the doctrines of res judicata and collateral estopped, and specifying why the WCAB denied petitioner his awards.

The California State Labor Code, Section 5953 states that:

> "The findings of fact and conclusions of the Appeals Board on questions of fact are conclusive and final, and are not subject to review."

Thereupon, petitioner filed a complaint in the U.S. District Court Case No. 93-5036 WDK (EE), and amended on November 10, 1993.

Petitioner alleged that he had no other venue other than a Federal Court to pursue redress, and that petitioner was denied his rights an sought redress relative to TITLE 42 U.S.C., Section 1983 and demanded a jury trial as alleged under the Seventh Amendment of the U.S. Constitution.

The petitioner sought the right to attack judgments rendered in State Courts resulting from a product of fraud, or when secondary trial courts lacked jurisdiction, by relitigating the same causes of actions and issues of judgments rendered by prior constitutional Courts having jurisdiction thereof, with merit, and with res judicata effect.

Petitioner alleged that the U.S. Magistrate and the U.S. District judge hearing the matter ignored and failed to address the issues raised in regard to said doctrines as showing in APPENDIX B, and rendered judgment against the petitioner on March 2, 1992.

Thereupon petitioner filed an appeal with the U.S. Court of Appeal, Ninth Circuit, Docket No. 94-55441, on June 15, 1992.

Petitioner again brought the matter of alleged violations of the doctrines of res judicata and collateral estoppel in a memorandum to said Court, which also ignored and failed to address the doctrines and issues.

Petitioner, therefore, requested a rehearing which also denied on December 27, 1994, as showing in APPENDIX A.

Petitioner is praying for the Supreme Court to issue an Extraordinary Writ of Mandamus only in regard to the alleged violations of his rights because all lower Courts failed to address the doctrines of res judicata and collateral estoppel, which are Federal and State laws which

should be enforced, and allow the petitioner his right for his jury trial to obtain his relief.

REASONS FOR GRANTING THE WRIT

The Extraordinary Writ of Mandamus should be granted because this petitioner presents issues resolved by implication by this Court with previous decisions rendered by this court, and with other constitutional Courts.

The doctrines of res judicata and collateral estoppel was ruled upon as Federal rules to prevent relitigation of the same causes of action and issues of final judgment rendered in constitutional Courts having jurisdiction thereto, with merit, to prevent the vexation, increased costs of suits to parties and the Courts, and that final judgments rendered must be estopped somewhere, and bring those suits to an end.

As stated in, Commissioner vs. Sunnen, 333 U.S., 591, 592, 68 S.Ct. 715, 92 L.Ed. 898 (1948), the Court stated:

> "The general rule of res judicata applies to repetitious suits involving the same causes of action. It rests upon considerations of economy of judicial time and policy favoring the establishment of certainty in legal relations. The rule provides that when a Court of competent jurisdiction has entered a final judgment on the merits of a cause of action,

> the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand but as to other admissible matter which might have been offered for that purpose."

In Cromwell vs. County of Sac, 94, U.S. 351, 352, 24 L.Ed. 195, the Court held:

> "The judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever fraud or some other factor invalidating the judgment."

In Montana vs. United States, 440 U.S. 147, 154, 155, 99 S.Ct. 970, 59 L.Ed.2d 552 (1979), the Court held that:

> "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions."

In Arizona vs. California, 460 U.S. 605, 103 S.Ct. 1382, 75 L.Ed.2d 318 (1983):

"When a tribunal disposes of an issue as res judicata, it invokes a rule of law to make a prior decision binding on a litigant and to deny him another hearing on the previously decided matter."

In Southern R.R. vs. United States, 168 U.S. 1, 48-49, 18 S.Ct. 18, 42 L.Ed 355 (1897), the Court held:

"A right question, or fact distinctly put in issue and directly determined by a Court of competent jurisdiction, cannot be disputed in a subsequent suit between the same parties or the privies; and even if the second suit is for a different cause of action, be taken as conclusively established, so long as the judgment in the first suit remains unmodified."

In Cameron vs. Fogarity, 806 F.2d 107 S.Ct. 1894, 481 U.S. 1016, 95 L.Ed.2d 501, the Court held that the:

"FULL FAITH AND CREDIT STATUTE requires that the Federal Court give effect to at least the res judicata and collateral estoppel rules of State when State Court judgment is in question."

The California State Code of Civil Procedure, Section 1908 is a state law preventing relitigation of the same causes of action and issues. Therefore,

petitioner has a right under the FULL FAITH AND CREDIT STATUTE, TITLE 28 U.S.C., Section 1738, to have the Federal Court to address the doctrines of res judicata and collateral estoppel, which were ignored by the Federal Court, the State Courts, and the U.S. Court of Appeal further showing that petitioner has grounds for this Court to issue the requested Extraordinary Writ of Mandamus.

In Button vs. Harden, 814 F.2d 382, C.A. 7, 111 (1987), the Court held:

> "Findings made by State administrative bodies acting in judicial capacities have collateral effect under TITLE 42 U.S.C., Section 1983."

Petitioner alleges as the prior State Administrative WCAB Court was a constitutional Court having jurisdiction capacities and should be complied with in the secondary trial court which was ignored and therefore, petitioner had the right to file his Complaint in Federal Court under the TITLE 42 U.S.C., Section 1983, which was denied by the Federal Court, and the U.S. Court of Appeals in their rendered judgments.

In Humphrey vs. Faison, 247 N.C. 127, 100 S.E.2d 529, the Court held that:

> "A fact that has been agreed upon, or decided in a Court of competent jurisdiction binds parties in any subsequent proceeding between or among them, irrespective of different

forms or causes of action."

In E.I. DuPont de Nemours vs. Union Carbide Corp. (D.C. Ill) 250 F.Supp. 816, 819, the Court held that:

> "Prior judgment between the same parties on different causes of action is an estoppel as to those matters in issue or points converted, on determination of which finding or verdict was rendered."

In O'Malley vs. Nassau County Medical Center, 686 F.Supp. 62, L.Ed. N.Y. (1988), the Court held:

> "Under New York law, administrative hearing will not bar, on grounds of claim preclusion, Federal civil rights action brought under TITLE 42 U.S.C., Section 1983."

In Dryer vs. Dryer (1964) C.A.2d 441, 41, Cal.Rptr. 839, the California Supreme Court upholding said Code of Civil Procedure, Section 1908, which bars relitigation of the same causes of action and issues held that:

> "Litigation must end; one cannot urge same essential contention on two occasions when Court's decision is against him in the first."

In Pacific Gas & Electric Co. vs. Ind. Acc. Comm. (1953) 272 P.2d 818, 126 C.A.2d 554, the California Supreme Court

held:

> "The doctrine of res judicata applies to awards of the Industrial Accident Commission (subsequently WCAB) and to issues actually decided in such cases as between the same parties, or those in privity with them."

Petitioner alleges that the WCAB and respondent CASEY YOUNG, the Director of the State Division of Workers' Compensation, have been vested with the powers granted to them by the people of the State of California, through the State legislature to provide injured workers with Workers' Compensation as stated under the Workers' Compensation Act, and to enforce the State and Federal laws pertaining to the sphere in which they were vested. California Code of Civil Procedure, Section 1908 and Federal rules regarding the fraudulent relitigation of the same causes of action and issues in the secondary trial court were ignored and not addressed, thereby denying petitioner his awards allowed under said Act, and allowing BERLIN to be free of paying penalties and persecution for BERLIN'S alleged violations perpetrated upon the petitioner, and denying petitioner of his entitled relief.

In Oldham vs. Pritchett, (CA 8th, 1978) 599 F.2d 274, the Court set out four prerequisites for collateral estoppel as stated:

"1) an issue identical to one previously litigated;

2) a final judgment on the merits;

3) the estopped party was a party, or in privity with one;

4) the estopped party had a full and fair opportunity to be heard on the issue."

In Gaskill vs. Wallace (1939) 32 C.A. 2d 354, 89 P.2d 687, the California Supreme Court in ruling on State Code of Civil Procedure, Section 1908, held that:

> "Judgment rendered in Court of competent jurisdiction is res judicata not only on all questions actually litigated and decided, but on all others that might have been litigated in action, and party is not permitted to split his demands or defenses."

In Weil vs. Barthell (1955) 45 C.2d 835, 291 P.2d 30, the California Supreme Court held that:

> "Final judgment is res judicata of issues involved therein where court had jurisdiction."

In Federated Dept. Stores, Inc. vs. Moitre, 452 U.S. 934, 401 S.Ct. 2424 69 L.Ed. 103 (1981), the Court held that:

> "The doctrines of res judicata is a rule of fundamental and substantial justice of public peace, which should be cordially regarded and be forced by the Court."

In American Fidelity Corp. in re (1939) 28 F.Supp. 462, the Court held that:

> "Where State Court has jurisdiction over parties and subject matter of action, its judgment is res judicata between all parties to that suit, and as to all issues raised and decided therein."

In Martinez vs. De Los Rios (1960) 187 C.A.2d 28, 9 Cal.Rptr. 326, the Court held that:

> "Res judicata precludes parties or their privies from relitigating cause of action that was finally determined by Court of competent jurisdiction."

The WCAB and respondent CASEY YOUNG responded to petitioner's Complaint in Federal Court and the U.S. Court of Appeals that they were immune for their alleged wrongdoing by the 11th Amendment of the U.S. Constitution. In Solin vs. State Univ. of N.Y. (D.C.N.Y. 1976) 416 F.Supp. 534, the Court held:

> "That the 11th Amendment does not bar suit to adjoin enforcement of practice prohibited by

the constitution or statute."

In Worchester County Trust Co. vs. Riley (1937) Mas. 58 S.Ct. 185, 302, U.S. 292, 82 L.Ed. 268, the Court held:

> "That the 11th Amendment does not preclude suit against a wrongdoer merely because he asserts that his acts are within official authority which the States do not confer."

In Great Western Life Ins. Co. vs. Read (1944) 64 S.Ct. 873, 322 U.S. 47, 88 L.Ed. 1121, the Court held:

> "The 11th Amendment does not preclude suit against a wrongdoer merely because he asserts that his acts are within official authority which the States do not confer."

In Ford Motor Co. vs. Dept. of Treasury of State of Indiana (1945) 65 S.Ct. 347, 323 U.S. 459, 89 L.Ed. 389, the Court held:

> "Where relief is sought under the general law for wrongful acts of State officials, the sovereign's immunity under the 11th Amendment does not extend to wrongful individual action, and the citizen is allowed a remedy against the wrongdoer, personally."

In Capitol Industries-EMI, Inc. vs. Bennett, C.A. Cal. (1982) 681, F.2d 1107,

102 S.Ct. 1438, 455 U.S. 943, 71 L.Ed. 655, the court upholding the ruling of the California Supreme Court, held that:

> "A suit against State officials is not considered a suit against the State in violation of the 11th Amendment where challenged actions of State officials are beyond authority granted to them by valid statutes, or are performed pursuant to unconstitutional statutes; in both situations relief can be granted without interpleading the State."

In Chicago R.I. & P.R. Co. vs. Long, C.A. Iowa (1956) 181, F.2d 295, the Court held in regard to the 11th Amendment that:

> "This amendment does not prohibit a suit against State officials when there is a constitutional infringement of plaintiff's rights nor when an official is acting under an invalid statute."

In United States Steel Corp. vs. Multi-State Tax Comm., D.C.N.Y. (1973) F. Supp. 107, the Court held:

> "Suit against a state official is not considered a suit against the state in violation of the 11th Amendment where the actions of the officials which are challenged:

"1) are beyond the authority granted to him by a valid statute;

"2) are performed pursuant to an unconstitutional statute. In both situations, relief can be granted without impleading the State because of the official's lack of delegated power."

In Louisiana State Board of Ed. vs. Baker, C.A. LA (1964) 339 F.2d 911, the Court held that the:

"11th Amendment provides no haven for State agency when it violates federally protected constitutional rights."

Petitioner alleges that the WCAB Administrative Court in its subsequent faulty review and the failure of CASEY YOUNG, the Director of the State Division of Workers' Compensation, ignored and failed to comply with State and Federal laws for which they were vested with those powers by the State to provide fair hearings and to enforce the said laws to protect injured workers, thereby depriving the petitioner of due process as stated in the 14th Amendment of the U.S., Constitution.

In Field vs. Boyle, C.A. Ill. (1974) 503 F.2d 774, the Court held that:

"Due process questions under the Federal Constitution may be presented either by failure of the State of follow its own

rules of law, or by State rules of law serving as a deprivation of due process."

The California Code of Civil Procedure, Section 1908, states a State law bars relitigation of the same causes of action and issues which would violate the doctrines of res judicata and collateral estoppel, which law is similar to the Federal rules, as described herein.

In Johnson vs. Smith, D.C. Ga. (1968), 295 F.Supp. 835, the Court held that:

"In order for wrong to be subject to redress under the 14th Amendment, it must result from State action, or at least, the State must have some way of knowing of its occurrence."

Petitioner alleges that he initiated a WCAB claim with resulting hearing before a prior State administrative Court having jurisdiction thereof with merit, and with res judicata effect. The prior Court hearing as shown in APPENDIX E, in which a stipulated agreement was made by both parties and judgment entered, is proof that the State knew of its occurrence.

In In Re National Structures, Inc., 74 B.R. (Bankruptcy Ed. Wis. 1987), the Court held:

"A Federal Court may attack a State Court's judgment if there is claimed to be a product of fraud, collusion, or duress, or

> when a prior Court lacked personal or subject matter jurisdiction."

As stated herein, the prior WCAB Court was a constitutional Court having jurisdiction thereof, and it was the secondary trial Court which ignored and filed to address the res judicata effect of the judgment rendered in the prior Court, and said secondary Court should have recognized the fraudulent breaching of the stipulated agreement of both parties, and judgment against BERLIN.

In Browning vs. Navarro, 826 F.2d 335, the Court held that:

> "A Federal Court may proceed to enforce a Court's judgment imposing constructive trust. Corrupt abuse in judicial process in State Court proceedings could serve as a basis to collaterally attack State Court judgments."

BERLIN and her three procured witnesses who testified under oath and under penalty of perjury at the 132 secondary Trial Court, knew that they were providing that Court with fraudulent testimony, and the WCAB trial judge hearing the matter ignored oral testimony and a written brief, which should have estopped said fraudulent testimony perpetrated in his Court. Such abuse of the judicial process is a basis to collaterally attack the State Court judgments in Federal Court.

In Altcorp. vs. Small Bus. Admin., 801 F.2d 1451, C.A. (Texas 1986), the Texas State Court held that:

> "Judgment reached without due process is void and may be collaterally attacked in Federal Court not withstanding statutory requirements of the FULL FAITH CREDIT STATUTE under TITLE 28 U.S.C., Section 1738, and the 14th Amendment."

In Holcomb vs. WCAB (1968) 71 Cal.Rptr. 876, 266 C.A.2d 108, the California Supreme Court held that:

> "Decision on Appeals Board which stated that the Board had carefully reviewed the record in reaching a decision to deny petition for reconsideration, but which did not specify any of the evidence on which the Board relied, did not meet the requirement that the decision specify in detail the reasons for the decision and extensive quotations from the record in the Board's answer to petition for review did not satisfy the requirement."

As shown in APPENDIX C, the WCAB rendered a decision of their review with an order denying reconsideration "for the foregoing reasons" without providing the petitioner with specified reasons for their decision, and further ignoring and failing to address the State and Federal laws regarding the doctrines of res

judicata and collateral estoppel.

In Ascough vs. WCAB (1971) 98 Cal. Rptr. 357, 21 C.A.3d 248, the California Supreme Court held that:

> "WCAB is required in granting petition for rehearing, to state evidence relied upon and specify in detail the reasons for its decision so as to apprise the parties and the referee as to the basis for reconsideration."

As described herein in Holcomb vs. WCAB the so-called reviews by the WCAB abused the petitioner and did not provide the petitioner with due process and therefore, there are grounds for the petitioner to collaterally attack the WCAB judgment in Federal Court under TITLE 28 U.S.C., Section 1738, and the 14th Amendment.

Petitioner alleges that BERLIN was motivated to procure witnesses to testify at the secondary Trial Court for the following reasons:

1) At the prior court as shown in APPENDIX E, the hearing was a civil trial whereby BERLIN'S Workers' Compensation insurer would be held liable for payment of any awards due the petitioner. Therefore, BERLIN did not find it necessary to procure witnesses although BERLIN had the opportunity to do so,then readily signed a stipulation between both parties and judgment was rendered by the Court against BERLIN.

2) On the other hand, the secondary 132a trial was a criminal trial, which was bifurcated from all other issues in petitioner's WCAB claim, whereby BERLIN was subjected to paying large penalties, reinstatement of employment to petitioner personally for a period of over six years, with back wages, and other entitlement including payment of medical benefits for permanent injuries. In addition, BERLIN was liable for prosecution for BERLIN'S violation of the 132a labor law for discrimination against the petitioner.

Therefore, BERLIN found it necessary to organize a conspiracy by procuring witnesses who were willing to testify in Court under oath, and under penalty of perjury, and leaving the trial judge to ignore and not address the doctrines of res judicata and collateral estoppel despite the oral and written pleadings by the petitioner.

Respondents WCAB and CASEY YOUNG possessed the powers vested to them to provide petitioner with Workers' Compensation benefits adequately and quickly as stated under the Workers' Compensation Act.

Petitioner alleges that both the WCAB and CASEY YOUNG were negligent in performing their vested duties, failed to enforce the laws protecting the petitioner despite his pleadings for assistance, when the petitioner was faced with a wealthy greedy employer such as BERLIN, who had the means to deny petitioner his rights under the laws stated herein, and therefore petitioner prays for the Court

to issue his requested EXTRAORDINARY WRIT OF MANDAMUS in order that petitioner may obtain his entitled relief at a jury trial in accordance with the 7th Amendment of the U.S. Constitution.

CONCLUSION

For the reasons set forth above, an Extraordinary Writ of Mandamus should be issued to review the judgment and opinion of the U.S. Court of Appeals, Ninth Circuit, in this matter.

DATED: APRIL 21, 1995

Respectfully submitted,

Leonard Sherman

LEONARD SHERMAN,
Attorney for Petitioner,
In Pro Se

UNITED STATES COURT OF APPEAL,NINTH CIRCUIT

LEONARD SHERMAN, Appellant

vs.

JOAN D. BERLIN, et al, Respondents

Docket No.: 94-55441

D.C. No. : CV- 93-05036 - WDK (EE)

Date Filed: October 6, 1994

Appeal from the United States District Court for the Central District of California William D. Keller, District Judge, Presiding, Before Browning, Farris, and Leavy, Circuit Judges.

LEONARD SHERMAN appeals pro se the District Court's dismissal of his 42 U.S.C. section 1983 action. Sherman contends that the proceedings before the California Worker's Compensation Appeals Board ("WCAB"). We have jurisdiction under 28 U.S.C. Section 1291, and we affirm.

APPENDIX A

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

LEONARD SHERMAN, Appellant

vs.

JOAN D. BERLIN, et al, Respondents

Docket No.: 94-5541

D.C. No.: CV-93-5036 - WDK (EE)

Date Filed: December 27, 1994

ORDER

Before Browning, Farris, and Leavy, Circuit Judges

THE PETITION FOR REHEARING IS DENIED

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEONARD SHERMAN, Plaintiff

v.

JOAN D. BERLIN et al, Defendants

Case No.: CV -93-5036-WDK (EE)

Date Filed: February 25, 1994

FINAL REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE

"It is therefore the final recommendation that the Court approve these reports and recommendations, and enter judgement, dismissing the complaint with prejudice."

Elgin Edwards
U.S. Magistrate Judge

APPENDIX B

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

LEONARD SHERMAN, Plaintiff

vs.

JOAN D. BERLIN et al, Defendants

CASE NO.: CV 93-5036- WDK (EE)

Date Filed: March 4, 1994

JUDGEMENT

It is adjudged that this action is dismissed with prejudice.

William D. Keller
U.S. District Judge

APPENDIX B

WORKER'S COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

LEONARD SHERMAN, Applicant

vs.

JOAN D. BERLIN et al, Defendants

Case No.: 86 MON 92674

Filing Date: December 29, 1993

PETITION FOR RECONSIDERATION UPON THE FOLLOWING GROUNDS:

1) Decision of Board acted in excess of its powers;
2) The decision (award) was procured by fraud;
3) The evidence does not justify the Findings of Fact;
4) The Findings of Fact do not support the Order, Decision, or Award.

PETITION FOR RECONSIDERATION

Applicant alleges the Opinion of Decision and judgement, and award by WCAB Judge

QUINONES issued on December 29, 1992 in a trial for 132a, found the termination of the Appellant arose from causes independent of his WCAB claim and was clearly due to his inability to perform his job due to various non-industrial causes of non-industrial medical maladies. The Court accepted the testimony of Defendant's witnesses that Appellant's job was terminated on September 22, 1986, prior to Appellant filing his WCAB claim on October 1, 1986, and the Defendant was therefore not liable for prosecution for the alleged violation under Labor Code 132a. The Court totally ignored the substantial documentary evidence presented to the Court to prove the violation by the Defendant.

Appellant alleges that there was NO meeting held on September 22, 1986, in which the Appellant was "verbally"

terminated as testified under oath by the witnesses of the Defendant.

Furthermore, the testimonies of said Defendant's witnesses, and the Court's findings that Appellant's illnesses were clearly due to his inability to perform his job was due to various non-industrial medical maladies constitutes re-litigation of issues in which the following facts were admitted and stipulated by all parties on November 7, 1987 with a judgement entered based upon said stipulation by the Honorable WCAB Judge HALPERN.

The stipulation (by both parties) admitting the facts that Appellant was terminated from his employment on November 7, 1986, and (not on September 22, 1986) as alleged and testified by the

Defendant's witnesses is contrary to said stipulation that Defendant admitted that Appellant incurred and sustained work related injuries to his psyche and to his internal system (and not due to non-industrial causes) as stated to the Court. The Findings of Fact in the WCAB QUINONES Court and the denial of an award to the Appellant for which the Appellant is entitled, is based upon the false testimony contrived by the Defendant, and their attorneys, to avoid the penalties for which the Defendant is liable, and said testimony is barred by the DOCTRINES OF RES JUDICATA and COLLATERAL ESTOPPEL which prevents re-litigation of issues of judgements based upon admitted stipulations by both parties.

Furthermore, the Defendant had opportunity to present witnesses and produce documentary evidence at the WCAB HALPERN

hearing, which the Defendant failed to do, and therefore, the Appellant claims that said witnesses were organized to prevent the prosecution of the Defendant for violating 132a.

Wherefore, petitioner requests that reconsideration be granted, that further proceedings be had, and that decision be made to give petitioner all the benefits to which he is entitled under the Labor Code Section 132a of the State of California, including the relief requested herein.

Leonard Sherman

LEONARD SHERMAN, Petitioner,

in Pro Per

Executed on January 12, 1987 at West Hollywood, California

APPENDIX C

WORKER'S COMPENSATION APPEALS BOARD STATE OF CALIFORNIA

LEONARD SHERMAN, Applicant

vs.

JOAN D. BERLIN et al, Defendants

Case No.: 86 MON 92674

Date Filed: March 5, 1993

ORDER DENYING RECONSIDERATION

It is ordered that said petition for reconsideration be, and is hereby denied for the "Foregoing Reasons".

WORKERS COMPENSATION APPEALS BOARD

APPENDIX C

WORKERS'S COMPENSATION APPEARS BOARD STATE OF CALIFORNIA

LEONARD SHERMAN, Appellant

vs.

JOAN D. BERLIN et al, Defendants

Case No.: 86 MON 92674

Filing Date: December 29, 1992

FINDINGS OF FACT

1) The Court finds that termination of Applicant's employment by Defendant did not constitute an unlawful discrimination under Labor Code 132a;
2) The Court finds that Applicants termination arose from acts that were independent of compensation claim.

AWARD

Applicant takes nothing and is not entitled to benefits under 132a.

APPENDIX C

OPINION OF DECISION

Based upon the credible testimony of Defendant's witnesses, the Court finds that the termination of Applicant arose from causes independent of his filing a claim for Worker's Compensation, and was clearly due to his inability to perform his job due to various non-industrial medical maladies.

The Court is also of the opinion that the time of the verbal termination of the employee had not apprised his employer that he was suffering from an industrial injury or was in any way not able to do his job.

FRANK T. QUINONES

WORKERS COMPENSATION JUDGE

Dated December 29, 1992

APPENDIX C

WORKER'S COMPENSATION APPEAL BOARD STATE OF CALIFORNIA

LEONARD SHERMAN, Applicant

vs.

JOAN D. BERLIN et al, Defendant

Case No.: 86 MON 92674

Date: December 27, 1987

FINDINGS OF FACT

1) LEONARD SHERMAN, while employed as an apartment manager for JDB/JOAN BERLIN, sustained injury arising out of and in course of said employment;
2) wages were $1200.00 per month;
3) There is need for medical treatment to cure or relieve from the effects of said injury;
4) Applicant is entitled to be compensated at the rate of $190.00 per week.

OPINION OF DECISION

Based upon the reports of DRS. GELBARD

and SOSNER, and the stipulations of the parties, IT IS FOUND that while employed to November 7, 1986, as an apartment manager at Los Angeles, California, by employer, Applicant SUSTAINED INJURY ARISING OUT OF AND OCCURRING IN THE COURSE OF HIS EMPLOYMENT TO HIS PSYCHE INTERNAL SYSTEM, that Applicant is in need of further medical care or treatment to cure or relieve from the effects of this injury and that this injury caused disability for which Applicant is entitled to be compensated at the rate of $190.00 per week.

IRVING D. HALPERN

WORKER'S COMPENSATION JUDGE

Dated: December 29, 1987

APPENDIX E

AMENDMENT VII

Section I-In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, then according to the rules of the common law.

AMENDMENT II

Section I - The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of anothe State, by citizens oe subjects of any foreign State.

AMENDMENT XIV

Section I - All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the

of the United StatesUnited States,nor shall any State deprive any person of life,liberty, or property without due process of law,or deny to any person within its jurisdiction the equal protection of the laws.

APPENDEX F